

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

WASHINGTON MUTUAL BANK,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 05-11686-WGY
)	
DAN W. ADAMS, HEIDI K. ADAMS,)	
UNITED STATES OF AMERICA,)	
COMMONWEALTH OF)	
MASSACHUSETTS DEPARTMENT OF)	
REVENUE, DELTA FUNDING)	
CORPORATION and BENEFICIAL)	
MASSACHUSETTS INC.,)	
)	
Defendants.)	
)	

MOTION FOR ENTRY OF DEFAULT JUDGMENT

Pursuant to Rule 55(b) of the Federal Rules of Civil Procedure and this Court’s Standing Order Regarding Motions for Default Judgment, plaintiff Washington Mutual Bank (“Washington Mutual”) hereby moves for entry of default judgment against defendants Dan W. Adams, Heidi K. Adams, Delta Funding Corp. (“Delta”) and Beneficial Massachusetts Inc. (“Beneficial”) on Counts I and II of the Complaint, and against defendants Dan W. Adams and Heidi K. Adams on Count III of the Complaint. In support of this Motion, Washington Mutual states the following, as further supported in the Affidavit of J. Patrick Kennedy in Support of Motion for Entry of Default Judgment, which is being filed herewith:

1. This Complaint in this action was filed on August 15, 2005.
2. Defendant Beneficial was served with a summons and copy of the Complaint on August 17, 2005.

3. Defendant Delta was served with a summons and copy of the Complaint on August 18, 2005.

4. Defendants Dan W. Adams and Heidi K. Adams were served with summonses and copies of the Complaint on August 18, 2005.

5. On September 8 and 9, 2005, executed proofs of return of service were filed with the Court for each of these defendants.

6. On September 9, 2005, Washington Mutual filed Requests for Default against defendants Dan W. Adams, Heidi K. Adams and Delta due to their failure to timely file or serve an Answer or otherwise defend the Complaint. On September 13, 2005, Washington Mutual filed a Request for Default against defendant Beneficial due to its failure to timely file or serve an Answer or otherwise defend the Complaint. Defendants Dan W. Adams, Heidi K. Adams, Delta and Beneficial are hereinafter collectively referred to as the "Defaulted Defendants."

7. On September 14, 2005, this Court entered Notices of Entry of Default against each of the Defaulted Defendants.¹

8. On October 5, 2005, Washington Mutual filed its Motion to Extend Time Period to Seek Default Judgment (the "Motion to Extend") against the Defaulted Defendants. This Court allowed Washington Mutual's Motion to Extend in an Order entered on October 6, 2005.

9. None of the Defaulted Defendants is an infant or incompetent person.

10. The Defaulted Defendants who are individuals, namely Dan W. Adams and Heidi K. Adams, are not in the military service of the United States or its Allies, as defined in the Soldiers' and Sailors' Relief Act of 1940, as amended, and at present are individuals whose last known address is 15 Highfield Drive, Sandwich, Barnstable County, Massachusetts.

11. In light of the Defaulted Defendants' failure to file an Answer or otherwise defend the Complaint, judgment should be entered against each of Dan W. Adams, Heidi K. Adams, Delta and Beneficial on Counts I and II of the Complaint. Counts I and II of the Complaint do not seek a monetary judgment, and are the subject of Washington Mutual's Assented-to Motion for Judgment on the Pleadings, which is being filed herewith.

12. In light of defendants Dan W. Adams and Heidi K. Adams' failure to file an Answer or otherwise defend the Complaint, judgment should be entered against each of them on Count III of the Complaint. In Count III of the Complaint, Washington Mutual seeks to recover its attorneys' fees and costs for having to bring this action from defendants Dan W. and Heidi K. Adams. Washington Mutual's damages are not currently a sum certain or a sum by which computation can be made certain at this time. Rather, Washington Mutual requests that this Court enter a final judgment against Dan W. Adams and Heidi K. Adams on Count III of the Complaint, with a hearing to be scheduled or further submission to be made to establish the amount of attorneys' fees and costs to be awarded.

WHEREFORE, plaintiff Washington Mutual Bank respectfully requests that this Court allow this Motion, enter final judgment against defendants Dan W. Adams, Heidi K. Adams, Delta Funding Corp. and Beneficial Massachusetts Inc. on Counts I and II of the Complaint, and enter final judgment against defendants Dan W. Adams and Heidi K. Adams on Count III of the Complaint. Washington Mutual Bank further requests that this Court schedule a hearing or direct it to make a further submission to establish the amount of attorneys' fees and costs to be awarded against defendants Dan W. Adams and Heidi K. Adams on Count III of the Complaint.

¹ On September 29, 2005 after this Court entered its Notice of Default, an attorney entered an appearance as counsel of record for Beneficial. Beneficial has not filed any pleading or motion seeking to vacate the default entered against it.

WASHINGTON MUTUAL BANK,
By its Attorneys,

/s/ J. Patrick Kennedy
Donn A. Randall, BBO #631590
J. Patrick Kennedy, BBO #565778
Mary Ellen Manganelli, BBO #641658
Bulkley, Richardson and Gelinas, LLP
One Post Office Square, Suite 3700
Boston, MA 02109
(617) 368-2500

Dated: December 8, 2005

CERTIFICATE OF SERVICE

I, J. Patrick Kennedy, hereby certify that a true and correct copy of the foregoing document was served on all parties or counsel of record via this Court's CM/ECF system or, if not registered on this Court's CM/ECF system, then via first class mail, postage prepaid on this 8th day of December, 2005.

/s/ J. Patrick Kennedy
J. Patrick Kennedy

314661-1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

WASHINGTON MUTUAL BANK,

Plaintiff,

v.

DAN W. ADAMS, HEIDI K. ADAMS,
UNITED STATES OF AMERICA,
COMMONWEALTH OF
MASSACHUSETTS DEPARTMENT OF
REVENUE, DELTA FUNDING
CORPORATION and BENEFICIAL
MASSACHUSETTS INC.,

Defendants.

**AFFIDAVIT OF J. PATRICK KENNEDY IN SUPPORT
OF MOTION FOR ENTRY OF DEFAULT JUDGMENT**

I, J. Patrick Kennedy, being duly sworn upon oath, hereby depose and say:

1. I am an attorney with the firm Bulkley, Richardson and Gelinas, LLP, counsel of record for plaintiff Washington Mutual Bank (“Washington Mutual”) in this action. I am submitting this affidavit in support of Washington Mutual’s Motion for Entry of Default Judgment.

2. The Complaint in this action was filed on August 15, 2005.

3. Defendant Beneficial Massachusetts Inc. (“Beneficial”) was served with a summons and copy of the Complaint on August 17, 2005. A copy of the summons to Beneficial with a completed proof of return of service is attached hereto as Exhibit 1.

4. Defendant Delta Funding Corp. ("Delta") was served with a summons and copy of the Complaint on August 18, 2005. A copy of the summons to Delta with a completed proof of return of service is attached hereto as Exhibit 2.

5. Defendants Dan W. Adams and Heidi K. Adams were served with summonses and copies of the Complaint on August 18, 2005. Copies of the summonses to Dan W. Adams and Heidi K. Adams with completed proofs of return of service are attached hereto as Exhibits 3 and 4.

6. Defendants Dan W. Adams, Heidi K. Adams, Delta and Beneficial are hereinafter collectively referred to as the "Defaulted Defendants."

7. The time within which the Defaulted Defendants were required to file an Answer or otherwise defend the Complaint has expired. The Defaulted Defendants have not filed or served an Answer or other responsive pleading to the Complaint, or otherwise defended the Complaint. Other than Beneficial, whose attorney has filed a notice of appearance but no other pleading in this action, the Defaulted Defendants have not filed appearances in this action.

8. To the best of my knowledge, defendants Dan W. Adams and Heidi K. Adams are not persons in the military service as defined in Article I of the Soldiers' and Sailors' Civil Relief Act of 1930, as amended, and are not infants or incompetent persons. Defendants Delta and Beneficial are not infants or incompetent persons.

Sworn to under the penalties of perjury on this 6th day of December, 2005.

/s/ J. Patrick Kennedy
J. Patrick Kennedy

314704-1

Exhibit 1

UNITED STATES DISTRICT COURT

District of _____
Massachusetts

Washington Mutual Bank,
Plaintiff,

SUMMONS IN A CIVIL ACTION

V.

Dan W. Adams, Heidi K. Adams,
United States of America,
Commonwealth of Massachusetts
Department of Revenue, Delta
Funding Corporation and
Beneficial Massachusetts Inc.,
Defendants

CASE NUMBER:

05-11686 WGY

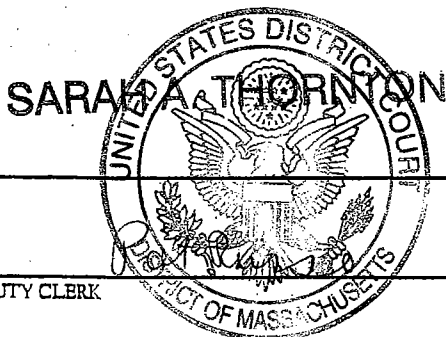
TO: (Name and address of Defendant)

Beneficial Massachusetts Inc.

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

J. Patrick Kennedy, Esq.
Bulkley, Richardson and Gelinas, LLP
One Post Office Square, Suite 3700
Boston, MA 02109

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.



CLERK

DATE

(By) DEPUTY CLERK

8-15-05



Suffolk County Sheriff's Department • 45 Bromfield Street • Boston, MA 02108 • (617) 989-6999

Suffolk, ss.

August 18, 2005

I hereby certify and return that on 8/17/2005 at 2:35PM I served a true and attested copy of the Summons, Complaint and Cover Sheet in this action in the following manner: To wit, by delivering in hand to Yvette Concepcion, Process Clerk, agent at the time of service for Beneficial Massachusetts Inc., c/o CT Corporation, 101 Federal Street, Boston, MA. U.S. District Court Fee (\$5.00), Basic Service Fee (1H) (\$30.00), Travel (\$1.00), Postage and Handling (\$1.00), Attest/Copies (\$5.00) Total Charges \$42.00

Deputy Sheriff

Deputy Sheriff John Cotter

Address of Server

Signature of Server

Date

Executed on

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

DECLARATION OF SERVER

TOTAL \$0.00

SERVICES

TRAVEL

STATEMENT OF SERVICE FEES

☐ Other (specify):

☐ Returned unexecuted:

☐ Name of person with whom the summons and complaint were left:

☐ discretion then residing therein.

☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and

☐ Served personally upon the defendant. Place where served:

Check one box below to indicate appropriate method of service

TITLE

NAME OF SERVER (PRINT)

DATE

Service of the Summons and complaint was made by me (n)

RETURN OF SERVICE

65619487

Exhibit 2

UNITED STATES DISTRICT COURT

District of _____
MassachusettsWashington Mutual Bank,
Plaintiff,

SUMMONS IN A CIVIL ACTION

V.

Dan W. Adams, Heidi K. Adams,
United States of America,
Commonwealth of Massachusetts
Department of Revenue, Delta
Funding Corporation and
Beneficial Massachusetts Inc.,
Defendants.

CASE NUMBER:

05 - 11686 WGY

TO: (Name and address of Defendant)

Delta Funding Corporation

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

J. Patrick Kennedy, Esq.
Bulkley, Richardson and Gelinas, LLP
One Post Office Square, Suite 3700
Boston, MA 02109

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

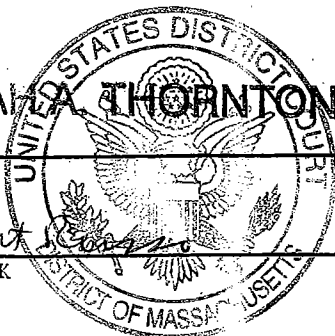
SARAH A. THORNTON

CLERK

DATE

8-15-05

(By) DEPUTY CLERK





Norfolk County Sheriff's Department P.O. Box 859215 Braintree, MA 02185-9215 / Tel. # (781) 326-1787
Norfolk, ss.

August 22, 2005

I hereby certify and return that on 8/19/2005 at 2:08PM I served a true and attested copy of the summons and complaint in this action in the following manner: To wit, by delivering in hand to Thomas Gordan, clerk and agent, person in charge at the time of service for Delta Funding Corp., at c/o Law Offices of Mark Gladstone 220 Forbes Road, Suite 301 Braintree, MA 02184. Basic Service Fee (\$30.00), Copies-Attestation (\$5.00), Conveyance (\$4.50), Postage and Handling (\$1.00), Travel (\$8.96) Total Charges \$49.46

Deputy Sheriff William M Blake

A handwritten signature in black ink, appearing to read "William M Blake", written over a horizontal line.

Deputy Sheriff

Exhibit 3

UNITED STATES DISTRICT COURT

District of
MassachusettsWashington Mutual Bank,
Plaintiff,
V.

SUMMONS IN A CIVIL ACTION

Dan W. Adams, Heidi K. Adams,
United States of America;
Commonwealth of Massachusetts
Department of Revenue, Delta
Funding Corporation and
Beneficial Massachusetts, Inc.,
Defendants

CASE NUMBER:

COPY

05 - 11686 WGY

TO: (Name and address of Defendant)

Dan W. Adams

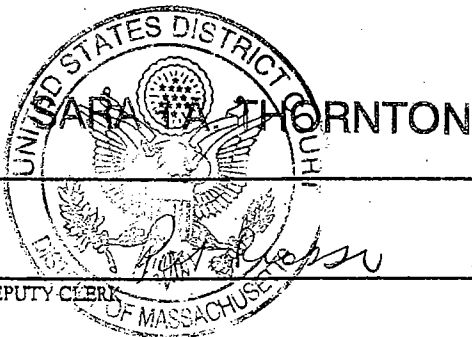
YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

J. Patrick Kennedy, Esq.
Bulkley, Richardson and Gelinas, LLP
One Post Office Square, Suite 3700
Boston, MA 02109

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

CLERK

(By) DEPUTY CLERK



DATE

8-15-05



Barnstable County Sheriff's Office

I hereby certify and return that on **August 18, 2005 at 2:00 PM** I served a true and attested copy of Summons, Complaint, Civil Action Cover Sheet & Category Sheet, to the within named Defendant, Dan W. Adams, by leaving at the last and usual abode to wit: 15 Highfield Drive, Sandwich, MA 02563, and by mailing 1st class a copy of the Summons to the Defendant at the stated address on August 18, 2005.

Fee: \$46.40

Jon M. Hunt

Jon M. Hunt, Deputy Sheriff
PO Box 661, W. Hyannisport, MA 02672

Exhibit 4

UNITED STATES DISTRICT COURT

District of
MassachusettsWashington Mutual Bank,
Plaintiff,

SUMMONS IN A CIVIL ACTION

V.

Dan W. Adams, Heidi K. Adams,
United States of America,
Commonwealth of Massachusetts
Department of Revenue, Delta
Funding Corporation and
Beneficial Massachusetts, Inc.,
Defendants.

CASE NUMBER:

COPY

05 - 11686 WGY

TO: (Name and address of Defendant)

Heidi K. Adams

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

J. Patrick Kennedy, Esq.
Bulkley, Richardson and Gelinas, LLP
One Post Office Square, Suite 3700
Boston, MA 02109

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

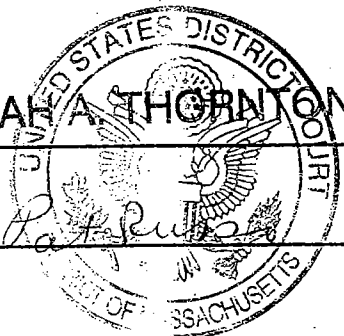
SARAH A. THORNTON

CLERK

DATE

8-15-05

(By) DEPUTY CLERK





Barnstable County Sheriff's Office

I hereby certify and return that on **August 18, 2005 at 2:00 PM** I served a true and attested copy of Summons, Complaint, Civil Action Cover Sheet & Category Sheet, to the within named Defendant, Heidi K. Adams, by leaving at the last and usual abode to wit: 15 Highfield Drive, Sandwich, MA 02563, and by mailing 1st class a copy of the Summons to the Defendant at the stated address on August 18, 2005.

Jon M. Hunt

Fee: \$20.00

Jon M. Hunt, Deputy Sheriff
PO Box 661, W. Hyannisport, MA 02672